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Attorney for DEFENDANT

IN THE MAGISTRATE COURT  
TOMBSTONE, ARIZONA

STATE OF ARIZONA,

Plaintiff,

-vs-

JACK FEATHER,

Defendant.

Case No. TR2019000043

MOTIONS FOR:

- (1) RECONSIDERATION OF THIS COURT'S DENIAL OF DEFENDANTS' MOTION TO DISQUALIFY THE CITY ATTORNEY/PROSECUTOR; and
- (2) FOR WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORTING THE COURT'S DENIAL OF DEFENDANTS' DISQUALIFICATION MOTION; and
- (3) MOTION TO STAY PROCEEDINGS OF THESE CASES, AND ASSOCIATED CASES, PENDING PETITION TO THE SUPERIOR COURT FOR SPECIAL ACTION REVIEW OF THIS COURT'S DENIAL ORDER

(Evidentiary Hearing Requested)

STATE OF ARIZONA,

Plaintiff,

-vs-

STEVEN M. STALY,

Defendant.

Case No. TR20190017

## MEMORANDUM

The undersigned filed, in each of the above-captioned cases, his *Motion to Disqualify the Tombstone City Attorney and His Contracted Staff from Further Prosecution of this Case and for an Order Dismissing all Pending Charges*. The motions *Inter alia* requested an evidentiary hearing and alleged violation of said Defendants' due process rights guaranteed by the Arizona and U.S. Constitutions. The Court has ruled from the bench that the above-captioned matters are joined for the limited purpose of consideration of the named Defendants' identical motions to disqualify the City Attorney and City Prosecutor. The Court also has ruled from the bench that the following cases are joined in the *Motion to Disqualify Tombstone City Attorney from Prosecution of This Case And For Dismissal Of All Charges*;

*State v. Streety*, TR20190056

*State v. Patera*, TR20190068

*State v. McCslure*, TR20190060

*State v. Robinson*, TR20190044

*State v. Osborn*, TR20190049

On or about August 31, 2019 Attorney Bays filed his five-paragraph response to the motion brought by Mr. Feather. On or about September 16, 2019, Mr. Contreras filed an identical response to the motion brought by Mr. Staly. On October 1, 2019, the undersigned filed his formal reply, again requesting an evidentiary hearing.

On October 10, 2019, in open court, the undersigned advised the Court that the issues raised by the Defendants' motions were joined and requested an evidentiary hearing and also advising that I would need enough time to cause subpoenas to be issued for the testimony of Mr. Bays, Mr. Contreras and the Cochise County Attorney. At that time, the Court advised that before any hearing could be set, he had requested that Mr. Bays do "additional research." It is unknown whether Mr. Bays and Judge Curfman had *ex parte* contacts or discussions in response to the judge's request but, in any event, no further filings or information were shared with the undersigned defense counsel.

On Monday, October 21, 2019, a suppression hearing took place before Judge Curfman. In the matter of *State v. Osborn*, TR20190049. At that time, and again in open court, the undersigned requested an evidentiary hearing on the disqualification motions. At that time Judge Curfman advised that a hearing would not be set until he received documents from "the chief lawyer at the Supreme Court." At that point, the Court Clerk, Shawn, advised the Court that the documents sought had been received. The undersigned requested a copy of the documentation. The Court advised that once had reviewed the documents, he would share copies with Mr. Contreras and the undersigned. Said copies were never received by the undersigned.

Two days later, on Wednesday, October 23, 2019, and without notice to the undersigned, the city counsel of Tombstone scheduled an emergency meeting to consider the issues which were pending before this Court. The emergency meeting was set for the following day October 24, 2019 at 3:00 P.M.

The next on day, on October 24, 2019, on information and belief at about 2:45 P.M., the emergency meeting was cancelled.

On October 25, 2019, the October 25, 2019 edition of the *Tombstone News*, Published a long column in the Legal Notices section of said "newspaper" announcing that at a meeting on October 25, 2019 the city counsel approved ordinance changes to "clarify" the provisions of the code which were challenged by the disqualification motion and which were still under consideration by this Court. The legal notice faslsely indicated that on October 24, 2019, the ordinance had been passed by the city council, had been approved by Mr. Bays, and had been attested to by the city clerk. On information and belief, the Tombstone Mayor is an owner and/or editor of the *Tombstone News*. (Note: In the November 8, 2019 edition of the mayor's newspaper published a retraction of the October 25 legal notice. The same ordinance changes are now scheduled for consideration at the November 12 meeting of the Tombstone city council. Of course, if the ordinance changes are enacted, they cannot be made to have retroactive effect on the issues still pending before this Court.)

During the week of October 27, 2019, the undersigned received orders, signed by this Court at 5:00 P.M., on October 24, 2019, denying the motions brought by Mr. Staly and Mr. Feather. No hearing was ever held. No documentation from the Supreme Court

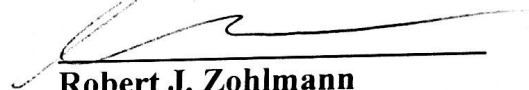
counsel were ever provided to counsel as promised by this Courtl. The denial order provided no findings of fact or conclusions of law.

It is hard to imagine a scenario which so disregards the Constitutional due process rights of accused who appear before this Court. Moreover, as the named Defendants intend to seek special action relief from this Court's denial of the disqualification, findings of fact and conclusions of law are required in order to present the same to the Superior Court for review. Accordingly, the undersigned seeks the following;

- (1) RECONSIDERATION OF THIS COURT'S DENIAL OF DEFENDANTS' MOTION TO DISQUALIFY THE CITY ATTORNEY/PROSECUTOR; and**
- (2) FOR WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORTING THE COURT'S DENIAL OF DEFENDANTS' DISQUALIFICATION MOTION; and**
- (3) A MOTION TO STAY PROCEEDINGS OF THESE CASES, AND ASSOCIATED CASES, PENDING PETITION TO THE SUPERIOR COURT FOR SPECIAL ACTION REVIEW OF THIS COURT'S DENIAL ORDER**

Dated: November 12, 2019

**Zohlmann Law Offices**



**Robert J. Zohlmann**  
**Attorney for the Defendants**